

L.N. 413 of 2005

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT  
(CAP. 452)**

**Guarantee Fund (Amendment) Regulations, 2005**

IN exercise of the powers conferred by article 21 of the Employment and Industrial Relations Act, the Minister of Education, Youth and Employment has made the following regulations:-

**1.** The title of these regulations is the Guarantee Fund (Amendment) Regulations, 2005 and they shall be read and construed as one with the Guarantee Fund Regulations, 2002, hereinafter referred to as “the principal regulations”. Title.  
L.N. 432 of 2002.

**2.** In regulation 2 of the principal regulations, immediately after the definition “liquidator” there shall be inserted the following new definition: Amends regulation 2 of the principal regulations.

“ “Member State” means a member state of the European Union or of the European Economic Area;”.

**3.** Regulation 3 of the principal regulations shall be amended as follows:- Amends regulation 3 of the principal regulations.

(a) paragraphs (a), (c), (d), (e) and (g) thereof shall be deleted;

(b) paragraph (b) thereof shall be renumbered as paragraph (a);

(c) paragraph (f) thereof shall be renumbered as paragraph (b), and for the words “the crews of sea-going vessels” there shall be substituted the word “share-fishermen”; and

(d) after paragraph (b) thereof, there shall be inserted a new paragraph (c) as follows:

“(c) an employee who, on his or her own or together with his or her parents, spouse, children or siblings, was the owner or part owner of the employer’s undertaking or business and had a considerable influence on its activities.”.

Renumbers  
regulation 10 of the  
principal  
regulations.

**4.** Regulation 10 of the principal regulations shall be renumbered as regulation 11 thereof.

Adds new  
regulation 10 to the  
principal  
regulations.

**5.** Immediately after regulation 9, there shall be added the following new regulation:-

“Insolvency  
proceedings.

10. (1) Notwithstanding any other provision in these regulations, in the case of any state of insolvency, where a request has been made for the opening of collective proceedings based on insolvency of the employer as provided for under the laws, regulations and administrative provisions of a Member State, occurring and affecting an undertaking with activities in the territories of at least two Member States, the guarantee institution responsible for meeting any employees’ outstanding claims made on or after the 8<sup>th</sup> October, 2005 shall be the institution in the Member State in whose territory the employees registering their claim habitually work, and the extent of the employees’ rights shall be determined by the law of the Member State governing the competent guarantee institution.

(2) In cases referred to in sub-regulation (1), where insolvency proceedings have been requested in a Member State other than Malta, any decision taken by the competent administrative authorities in that Member State shall be taken into account by the Administration Board in determining the employer’s state of insolvency in respect of any valid claims registered with the Fund.

(3) For the purpose of facilitating the implementation of the provisions of sub-regulation (1) hereof, the Administration Board shall take the necessary measures to cooperate fully with the competent administrative authorities and the guarantee institutions in other Member States responsible for meeting any employees’ outstanding claims in terms of Council Directive 80/987/EEC, and such measures shall include the request for and provision of any information considered necessary in any particular case.”.